

HB0149S02 compared with HB0149

~~text~~ shows text that was in HB0149 but was deleted in HB0149S02.

text shows text that was not in HB0149 but was inserted into HB0149S02.

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Senator Todd Weiler proposes the following substitute bill:

AMENDMENTS TO UTAH EXEMPTIONS ACT

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Earl D. Tanner

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes and additions to the Utah Exemptions Act for bankruptcy.

Highlighted Provisions:

This bill:

- ▶ updates dollar amounts for a debtor's primary personal residence;
- ▶ adds an exemption for firearms and ammunition;
- ▶ provides an exemption for wages;
- ▶ exempts a motor vehicle used by an individual in the individual's business, trade, or profession; and
- ▶ exempts nonresidents from using the state exemptions.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-5-503, as last amended by Laws of Utah 2010, Chapter 131

78B-5-505, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-5-506, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-5-507, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-5-513, as renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-5-503** is amended to read:

78B-5-503. Homestead exemption -- Definitions -- Excepted obligations -- Water rights and interests -- Conveyance -- Sale and disposition -- Property right for federal tax purposes.

(1) For purposes of this section:

(a) "Household" means a group of persons related by blood or marriage living together in the same dwelling as an economic unit, sharing furnishings, facilities, accommodations, and expenses.

(b) "Mobile home" is as defined in Section 57-16-3.

(c) "Primary personal residence" means a dwelling or mobile home, and the land surrounding it, not exceeding one acre, as is reasonably necessary for the use of the dwelling or mobile home, in which the individual and the individual's household reside.

(d) "Property" means:

(i) a primary personal residence;

(ii) real property; or

(iii) an equitable interest in real property awarded to a person in a divorce decree by a court.

(2) (a) An individual is entitled to a homestead exemption consisting of property in this state in an amount not exceeding:

(i) \$5,000 in value if the property consists in whole or in part of property which is not

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the primary personal residence of the individual; or

(i) [~~\$20,000~~] \$30,000 in value if the property claimed is the primary personal residence of the individual.

(b) If the property claimed as exempt is jointly owned, each joint owner is entitled to a homestead exemption; however

(i) for property exempt under Subsection (2)(a)(i), the maximum exemption may not exceed \$10,000 per household; or

(ii) for property exempt under Subsection (2)(a)(ii), the maximum exemption may not exceed [~~\$40,000~~] \$60,000 per household.

(c) A person may claim a homestead exemption in either or both of the following:

(i) one or more parcels of real property together with appurtenances and improvements;

or

(ii) a mobile home in which the claimant resides.

(d) A person may not claim a homestead exemption for property that the person acquired as a result of criminal activity.

(3) A homestead is exempt from judicial lien and from levy, execution, or forced sale except for:

(a) statutory liens for property taxes and assessments on the property;

(b) security interests in the property and judicial liens for debts created for the purchase price of the property;

(c) judicial liens obtained on debts created by failure to provide support or maintenance for dependent children; and

(d) consensual liens obtained on debts created by mutual contract.

(4) (a) Except as provided in Subsection (4)(b), water rights and interests, either in the form of corporate stock or otherwise, owned by the homestead claimant are exempt from execution to the extent that those rights and interests are necessarily employed in supplying water to the homestead for domestic and irrigating purposes.

(b) Those water rights and interests are not exempt from calls or assessments and sale by the corporations issuing the stock.

(5) (a) When a homestead is conveyed by the owner of the property, the conveyance may not subject the property to any lien to which it would not be subject in the hands of the

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owner.

(b) The proceeds of any sale, to the amount of the exemption existing at the time of sale, is exempt from levy, execution, or other process for one year after the receipt of the proceeds by the person entitled to the exemption.

(6) The sale and disposition of one homestead does not prevent the selection or purchase of another.

(7) For purposes of any claim or action for taxes brought by the United States Internal Revenue Service, a homestead exemption claimed on real property in this state is considered to be a property right.

Section 2. Section **78B-5-505** is amended to read:

78B-5-505. Property exempt from execution.

(1) (a) An individual is entitled to exemption of the following property:

(i) a burial plot for the individual and the individual's family;

(ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;

(iii) benefits the individual or the individual's dependent have received or are entitled to receive from any source because of:

(A) disability;

(B) illness; or

(C) unemployment;

(iv) benefits paid or payable for medical, surgical, or hospital care to the extent they are used by an individual or the individual's dependent to pay for that care;

(v) veterans benefits;

(vi) money or property received, and rights to receive money or property for child support;

(vii) money or property received, and rights to receive money or property for alimony or separate maintenance, to the extent reasonably necessary for the support of the individual and the individual's dependents;

(viii) (A) one:

(I) clothes washer and dryer;

(II) refrigerator;

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(III) freezer;

(IV) stove;

(V) microwave oven; [~~and~~]

(VI) sewing machine; and

(VII) television;

(B) all carpets in use;

(C) provisions sufficient for 12 months actually provided for individual or family use;

(D) all wearing apparel of every individual and dependent, not including jewelry or furs; and

(E) all beds and bedding for every individual or dependent;

(ix) except for works of art held by the debtor as part of a trade or business, works of art:

(A) depicting the debtor or the debtor and his resident family; or

(B) produced by the debtor or the debtor and his resident family;

(x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;

(xi) the proceeds or benefits of any life insurance contracts or policies paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, provided that the contract or policy has been owned by the debtor for a continuous unexpired period of one year;

(xii) the proceeds or benefits of any life insurance contracts or policies paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, provided that the contract or policy has been in existence for a continuous unexpired period of one year;

(xiii) proceeds and avails of any unmatured life insurance contracts owned by the debtor or any revocable grantor trust created by the debtor, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;

(xiv) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as

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a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), [~~or~~] 414(e), or 457, Internal Revenue Code; [~~and~~]

(xv) the interest of or any money or other assets payable to an alternate payee under a qualified domestic relations order as those terms are defined in Section 414(p), Internal Revenue Code[~~-~~]; and

(xvi) earnings of the individual that would be exempt from garnishment under Section 70C-7-103.

(b) The exemption granted by Subsection (1)(a)(xiv) does not apply to:

(i) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p), Internal Revenue Code; or

(ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy. This may not include amounts directly rolled over from other funds which are exempt from attachment under this section.

(2) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to proceeds and avails of any matured or unmatured life insurance contract assigned or pledged as collateral for repayment of a loan or other legal obligation.

(3) Exemptions under this section do not limit items that may be claimed as exempt under Section 78B-5-506.

Section 3. Section **78B-5-506** is amended to read:

78B-5-506. Value of exempt property -- Exemption of implements, professional books, tools, and motor vehicles.

(1) An individual is entitled to exemption of the following property up to an aggregate value of items in each subsection of [~~\$500~~] \$1,000:

(a) sofas, chairs, and related furnishings reasonably necessary for one household;

(b) dining and kitchen tables and chairs reasonably necessary for one household;

(c) animals, books, and musical instruments, if reasonably held for the personal use of the individual or [~~his~~] the individual's dependents; [~~and~~]

(d) heirlooms or other items of particular sentimental value to the individual[~~-~~]; and

(e) firearms and ammunition not included in other exemption categories in the amount of \$250 per individual, and not more than \$500 per household.

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(2) An individual is entitled to an exemption, not exceeding [~~\$3,500~~] \$5,000 in aggregate value, of implements, professional books, or tools of [~~his~~] the individual's trade, including motor vehicles to which no other exemption has been applied, and that are actually used by the individual in the individual's principal business, trade, or profession.

(3) (a) As used in this Subsection (3), "motor vehicle" does not include any motor vehicle designed for or used primarily for recreational purposes, such as:

(i) an off-highway vehicle as defined in Section 41-22-2, except a motorcycle the individual regularly uses for daily transportation; or

(ii) a recreational vehicle as defined in Section 13-14-102, except a van the individual regularly uses for daily transportation.

(b) An individual is entitled to an exemption, not exceeding [~~\$2,500~~] \$3,000 in value, of one motor vehicle.

(4) This section does not affect property exempt under Section 78B-5-505.

Section 4. Section **78B-5-507** is amended to read:

78B-5-507. Exemption of proceeds from property sold, taken by condemnation, lost, damaged, or destroyed -- Tracing exempt property and proceeds.

(1) (a) An individual who owned property described in this Subsection (1) is entitled to an exemption of proceeds that are traceable for one year after the compensation for the property is received if:

(i) (A) the property, or a part of the property, could have been claimed exempt under Subsection 78B-5-505(1)(a)(i) or (ii); or

(B) the property is personal property subject to a value limitation under Subsection 78B-5-506(1)(a), (b), or (c); and

(ii) the property has been:

(A) sold or taken by condemnation; or

(B) lost, damaged, or destroyed; and

(C) the owner has been compensated for the property.

(b) The exemption of proceeds under this Subsection (1) does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under Section 78B-5-503 or 78B-5-506.

(2) Money or other property exempt under Subsection 78B-5-505(1)(a)(iii), (iv), (v),

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(vi), (vii), (xiii), or (xiv), and Sections 78B-5-503, 78B-5-505, and 78B-5-506 remains exempt after its receipt by, and while it is in the possession of, the individual or in any other form into which it is traceable.

(3) Money or other property and proceeds exempt under this chapter are traceable under this section by application of:

(a) the principle of:

(i) first-in first-out; or

(ii) last-in last-out; or

(b) any other reasonable basis for tracing selected by the individual.

Section 5. Section **78B-5-513** is amended to read:

78B-5-513. Exemption provisions applicable in bankruptcy proceedings.

~~[No]~~ An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in Subsection (d) of Section 522 of the Bankruptcy Reform Act (Public Law 95-598), ~~[except as expressly permitted under this part]~~ unless the individual was a nonresident of this state for more than 180 days before filing for bankruptcy.

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Legislative Review Note

~~as of 2-14-13 8:16 AM~~

~~Office of Legislative Research and General Counsel}~~